

PRODUCT: 74 devices, known as *Desert-Air Lamps*, at Detroit, Mich., together with a number of placards entitled "Bring the Desert Into Your Home Desert-Air Lamps" and a number of folders entitled "America's Wonderlamp the amazing . . . dark-burning Desert-Air Lamp." Attached to each lamp was a tag entitled "Here's To Your Health Bring the Desert Into Your Home."

Examination showed that the lamp consisted of a parabolic reflector, with a central cone electric heating unit located in the center of the reflector.

NATURE OF CHARGE: Misbranding, Section 502 (a), the labeling of the article, namely, the above-mentioned placards, folders, and tags accompanying the article, was false and misleading. The labeling represented and suggested that the article was effective to relieve bronchitis, head colds, hay fever, asthma, and all types of respiratory ailments, and that it was effective to make babies breathe more easily and sleep better, to relieve the stuffy feeling in the baby's nose, to relieve night coughing, and to improve the user's health. The article would not fulfill the promises of benefit stated and implied.

DISPOSITION: Lloyd H. Elrod, Detroit, Mich., the consignee and owner of the devices, and the Dal Corp., the shipper of the devices, filed answers denying that the labeling contained false and misleading statements. The Government subsequently served upon these parties a set of written interrogatories which were answered by the Dal Corp. Thereafter, Lloyd H. Elrod indicated that he was willing to enter into a consent decree of condemnation, but the Dal Corp. refused to admit the allegations of misbranding.

The case came on for trial before the court without a jury on May 12, 1953, and at its conclusion, the court ruled in favor of the Government. On June 9, 1953, the court entered its findings of fact and conclusions of law that the device was misbranded by reason of false and misleading statements in the labeling with respect to the efficacy of the devices.

In accordance with the findings and conclusions, the court entered a decree of condemnation on June 9, 1953, and ordered that the Government recover court costs, storage costs, and other proper expenses from the Dal Corp., and that the condemned devices be released under bond to Lloyd H. Elrod to be relabeled under the supervision of the Department of Health, Education, and Welfare.

4016. Misbranding of Magnetic Ray device. U. S. v. 9 Devices, etc. (F. D. C. No. 30796. Sample No. 13069-L.)

LIBEL FILED: March 6, 1951, District of Colorado; libel amended on or about September 21, 1951.

ALLEGED SHIPMENT: On or about January 4 and 23, 1951, by the Magnetic Ray Co., from Dallas, Tex.

PRODUCT: 9 *Magnetic Ray devices* at Denver, Colo., together with a number of leaflets entitled "Directions for Taking Magnetic Ray Treatments" and "This is a copy of a letter written by Frank B. Moran, M. D." and a number of booklets entitled "Magnetic Ray Treatment."

The device consisted essentially of a coil of wire enclosed in a covering of imitation leather and made in the form of a belt. Attached to the device was an electric cord which was to be plugged into an ordinary lighting current outlet.

NATURE OF CHARGE: Misbranding, Section 502 (a), certain statements in the above-mentioned booklets and leaflets accompanying the device were false and misleading. The statements represented and suggested that the device was effective in the treatment of acid stomach, anemia, arthritis, asthma, affections

of the pelvic organs, Bright's disease, bronchial trouble, bladder trouble, bad circulation, catarrh, catarrhal deafness, constipation, diabetes, eczema, goiter, hay fever, heart disease, high and low blood pressure, headache, hemorrhoids, indigestion, insomnia, lumbago, nervousness, paralysis, painful menstruation, prostate, rheumatism, sciatica, sinus trouble, toxemia, tumors, varicose veins, and ulcers; and that it was effective to increase the elimination of poisons, greatly assisting in the removal of toxic conditions; to promote and equalize circulation of the blood, relieving congestion in every part of the body; to relieve pain and other distressing physical sensations; to produce marked relaxation and promote sound and refreshing sleep; to stimulate a normal functioning of the various glands and other organs of the body; to overcome fatigue which is a usual result of toxemia; to increase efficiency both physical and mental; to exert a revitalizing influence upon the sexual or procreative glands; and to clear the complexion.

DISPOSITION: E. J. Reynolds, Denver, Colo., claimant, filed a motion to strike certain allegations from the libel and a motion for dismissal of the libel, and on August 9, 1951, the court overruled these motions. The claimant filed an answer to the libel on August 11, 1951, and, thereafter, the Government served a number of written interrogatories upon the claimant which were answered.

On or about September 21, 1951, the libel was amended to charge that the device was misbranded not only when introduced into and while in interstate commerce but also while held for sale after shipment in interstate commerce. The Government filed at this time a motion for summary judgment which was argued before the court on November 2, 1951.

On April 16, 1952, the court granted the motion for summary judgment and entered a decree providing for condemnation of the devices, the delivery of 3 of the devices and certain labeling to the Food and Drug Administration, and the destruction of the remainder of the devices and labeling.

A notice of appeal to the Court of Appeals for the Tenth Circuit was filed by the claimant, and on July 16, 1952, pursuant to a stipulation by and between the parties, an order was entered directing the dismissal of the appeal.

4017. Misbranding of Oxydonor device. U. S. v. 5 Devices, etc. (F. D. C. No. 33287. Sample No. 37893-L.)

LIBEL FILED: June 25, 1952, Southern District of New York.

ALLEGED SHIPMENT: The devices were shipped on or about December 12, 1949, December 30, 1950, and January 30, 1951, by the B. J. Riley Mfg. Co., from Newark, N. J. A number of booklets relating to the devices were mailed at various times from Dr. H. Sanche & Co., Ltd., Montreal, Canada.

PRODUCT: 5 *Oxydonor devices*, together with various unassembled parts of the devices consisting of approximately 770 empty cylinders, 1,000 metal discs (ankle plates), 1,000 ankle plate slides, and 500 wire connectors, and a number of booklets entitled "Brief Directions for the use of Oxydonor" and leaflets entitled "Important Notice," at New York, N. Y., in the possession of the Hydrotonic Co. The leaflets had been printed locally.

The complete device consisted of a hollow metal cylinder filled with powdered ferric oxide, into one end of which was screwed a plug to which was attached a length of wire. In the case of some of the devices, there was attached to the other end of the wire a metal disc to which was attached also an elastic tape by means of which the disc could be held against the ankle. In the case of other devices, the wire from the plug was attached to two other wires, each of which was attached to a metal disc and elastic tape as described.